

Message Text

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ACTION EB-08

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FOR SYVRUD FROM AMMERMAN

E.O. 11652: N/A
TAGS: EFIN, UK
SUBJECT: UK REQUIREMENTS OR RESTRICTIONS ON BANK
TAKEOVERS; METHODS OF BANK SUPERVISION

REF: LONDON A-1782, DECEMBER 5, 1972

1. YOU ASKED ABOUT THE NATURE OF LEGAL OR ADMINISTRATIVE
RESTRICTIONS ON THE TAKEOVER OF DOMESTIC U.K. BANKS BY
FOREIGN OR FOREIGN-OWNED BANKS; WHETHER PRIOR AUTHORIZA-
TION IS REQUIRED AND IF SO IS THE PERMISSION GRANTED
AUTOMATICALLY; AND IF THERE ARE DIFFERENCES IN CONTROLS
AND SUPERVISION.

2. AT A MINIMUM, THE BANK OF ENGLAND WOULD WANT TO BE
INFORMED, AND GIVEN THE OPPORTUNITY TO OBJECT (I.E.,
REFUSE PERMISSION). A FOREIGN-OWNED OR CONTROLLED BANK
ATTEMPTING TO TAKE OVER A DOMESTIC U.K. BANK WOULD HAVE
TWO HURDLES TO OVERCOME. THE FIRST OF THESE WOULD BE
THE CITY CODE ON TAKEOVERS AND MERGERS WHICH MIGHT HAVE
APPLICABILITY, ALTHOUGH IT DOES NOT HAVE THE FORCE OF
LAW. IN ADDITION, THERE WOULD ALMOST CERTAINLY BE A
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REQUIREMENT FOR NOTIFICATION TO THE MONOPOLIES COM-
MISSION (IN THE DEPARTMENT OF INDUSTRY); BANK OF ENGLAND
SOURCE REPORTS THAT MERGERS WHICH BRING TOGETHER COM-
BINED ASSETS OVER 5 MILLION POUNDS OR WHICH WOULD GIVE
A HOLDING ABOVE A CERTAIN SHARE OF EQUITY CAPITAL ARE
AUTOMATICALLY REFERRED TO THE COMMISSION, WHICH MAY
OR MAY NOT DEPENDING ON THE CIRCUMSTANCES UNDERTAKE AN

INVESTIGATION. THE BANK OF ENGLAND PROBABLY WOULD GIVE ITS VIEWS AT THAT TIME ON AN INFORMAL BASIS.

3. THE SECOND AND IN ALL PROBABILITY MORE SERIOUS HURDLE WOULD BE IN VETTING BY THE BANK OF ENGLAND. THE BANK OF ENGLAND'S BASIC POSITION REMAINS THAT SET FORTH IN ATTACHMENT ONETO LONDON A-1782 OF DECEMBER 5, 1972. THIS PRESS NOTICE IS STILL HANDED OUT BY THE BANK OF ENGLAND IN ANSWER TO QUESTIONS ABOUT TAKEOVERS. ITS TEXT IS AS FOLLOWS:

"THE BANK OF ENGLAND ANNOUNCE, IN THE CONTEXT OF ENTRY INTO THE EUROPEAN ECONOMIC COMMUNITY, SOME MODIFICATIONS TO THEIR PRESENT RULES ON MERGERS AND PARTICIPATIONS IN THE BANKING FIELD.

IN PRINCIPLE, SUBJECT TO THE PROVISIONS OF THE MONOPOLIES AND MERGERS ACT OF 1965 AND TO FULL CONSULTATION IN ADVANCE, THE BANK WILL NO LONGER OBJECT TO CLEARING BANKS TAKING PARTICIPATIONS IN ACCEPTING HOUSES OF MORE THAN 25 PERCENT. THEY WILL ALSO BE PREPARED TO TREAT OTHER EEC BANKS IN THE SAME WAY AS BRITISH BANKS FOR THE PURPOSE OF PARTICIPATIONS IN BRITISH BANKS; ANDHENCE, IN COMPARABLE CASES, TO CONSIDER THEIR TAKING PARTICIPATIONS EXCEEDING 15 PERCENT IN ACCEPTING HOUSES AS WELL AS IN OTHER UK MERCHANT BANKING ENTERPRISES; AND, IF THIS QUESTION ARISES, IN LIMITED OFFICIAL USE

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BRITISH OVERSEAS BANKS.

WITHIN THESE GENERAL GUIDELINES THE BANK WILL CONSIDER ALL PROPOSALS FOR MERGERS - TO BE INTERPRETED IN THIS CONTEXT AS ALL PARTICIPATIONS OF MORE THAN 15 PERCENT - ON THEIR INDIVIDUAL MERITS. THEIR CONCURRENCE WILL BE CONDITIONAL IN EACH CASE ON THE EXISTENCE OF AMICABLE AGREEMENT BETWEEN THE PARTIES CONCERNED AND ON THE SATISFACTION OF TESTS RELATING TO CAPITAL, MANAGEMENT, REPUTATION AND FUTURE INTENTIONS. THE BANK WILL PAY PARTICULAR REGARD TO THE NATURE OF ANY PROPOSED ALLIANCE WITH AN ACCEPTING HOUSE IN ORDER TO SATISFY THEMSELVES THAT IT GIVES PROPER WEIGHT TO THE SKILLS AND TALENTS ON EACH SIDE. IN CONSIDERING PROPOSALS FOR PARTICIPATIONS BY EEC BANKS THEY WILL ALSO TAKE ACCOUNT OF THE AUTHORITIES' ATTITUDES ELSEWHERE IN THE COMMUNITY TO PARTICIPATIONS BY BRITISH BANKS.

THE LIBERAL PRACTICE IN RELATION TO THE ESTABLISHMENT BY THIRD-COUNTRY BANKS OF BRANCHES OR SUBSIDIARIES IN LONDON WILL CONTINUE AND THE

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BANK'S ATTITUDE TO PARTICIPATIONS BY THIRD-COUNTRY
BANKS WILL REMAIN UNCHANGED.

IT IS UNDERSTOOD THAT BANKS WILL CONSULT THE
BANK ON ALL PROPOSALS FOR PARTICIPATIONS EXCEEDING
15 PERCENT AS EARLY AS POSSIBLE AND BEFORE ANY
FORMAL NEGOTIATION IS UNDERTAKEN; AND THAT THEY
WILL ACCEPT THE BANK'S RULING IN EACH CASE AND TAKE
NO IRREVOCABLE STEPS IN THE MEANTIME.

IN ORDER THAT THE APPLICATION OF THE PRO-
VISIONS OF THE MONOPOLIES AND MERGERS ACT OF
1965 TO ANY PROPOSALS FOR PARTICIPATIONS IN EXCESS
OF 15 PERCENT MAY BE HANDLED EFFICIENTLY AND WITH-
OUT RISK OF CONFUSION, THE BANK WILL DRAW THEM TO
THE ATTENTION OF HM TREASURY AND THE DEPARTMENT OF
TRADE & INDUSTRY AT A STAGE SUFFICIENTLY EARLY TO
AVOID ANY DIFFICULTIES LATER ON FOR BOTH THE
GOVERNMENT AND THE BANKS CONCERNED.

THE CHANGES IN THE BANK'S RULES ON BANKING
MERGERS AND PARTICIPATIONS WILL TAKE EFFECT FROM
THE 1ST JANUARY 1973.

4. GIVEN THE ABOVE, ANY PROPOSAL FOR
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MERGER WITH A PARTICIPATION ABOVE 15 PERCENT MUST BE REFERRED TO THE BANK OF ENGLAND WHERE IT WILL BE CONSIDERED ON ITS MERITS. EACH PARTY IN THE MERGER MUST BE IN "AMICABLE AGREEMENT". THE IMPLICATION IS THAT IN MOST CASES THE BANK WOULD NOT OBJECT TO A PARTICIPATION OF LESS THAN 15 PERCENT, AND THAT FOR FOREIGN NON-EC BANKS, 15 PERCENT WOULD BE THE UPPER LIMIT OF PARTICIPATION ALLOWED IN AN ACCEPTING HOUSE. (BACKGROUND DETAILS IN REFERENCED AIRGRAM.)

5. THE BANK'S BASIC POSITION IS THAT IT IS FLEXIBLE AND RECEPTIVE TO SENSIBLE PROPOSALS, BUT THAT THERE COULD BE STICKING POINTS. IT MIGHT AGREE TO A PARTICIPATION BY A FOREIGN BANK, BUT NOT BY A DOMESTIC BANK. FOR EXAMPLE, THE BANK REFUSED TO ALLOW SLATER WALKER, A BRITISH FIRM, TO TAKE OVER THE HILL SAMUEL ACCEPTING HOUSE; MORGAN GUARANTY BANK HAS A 33 PERCENT PARTICIPATION IN MORGAN GRENFELL, AN ACCEPTING HOUSE, AND U.S. BANKS HAVE ALSO HAD PARTICIPATIONS IN WHAT ARE CALLED BRITISH OVERSEAS BANKS (AS, FOR EXAMPLE, CITIBANK'S PARTICIPATION IN GRINDLAYS BANK WHICH MAY BE AS HIGH AS 40 PERCENT).

6. THE QUESTION OF A U.K. RESPONSE SHOULD AN AMERICAN OR OTHER FOREIGN BANK ATTEMPT TO MERGE WITH A CLEARING BANK HAS NOT BEEN PRECISELY FORMULATED. INFORMALLY, BANK OF ENGLAND OFFICIALS THINK IT WOULD BE UNLIKELY TO HAPPEN BECAUSE OF THE EXTREME EXPENSE INVOLVED, AND THE LIKELIHOOD THAT SUCH A MERGER MIGHT NOT BE AMICABLE; IF SUCH A MERGER WERE PROPOSED, THE BANK WOULD BE FACED WITH A FAIRLY DIFFICULT SITUATION, AND GIVEN THE CONCENTRATION AND MARKET SHARE OF THE CLEARING BANKS, IT PROBABLY WOULD NOT WISH TO SURRENDER SUCH A HEAVY DEGREE OF INFLUENCE OVER THE BRITISH MONETARY AND FINANCIAL SCENE TO A FOR-

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EIGN ENTITY. ALL OF THIS IS HYPOTHETICAL. THE BANK OF ENGLAND WOULD NOT DEVELOP A POSITION ON SUCH A QUESTION UNLESS THERE WERE AN ACTUAL CASE, OR AT LEAST INFORMAL SOUNDINGS.

7. A U.K. SUBSIDIARY OF A FOREIGN BANK IS CONSIDERED A BRITISH BANK IN TERMS OF PRUDENTIAL EXAMINATION. THE

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QUALITY AND EXTENT OF ITS BANK EXAMINATIONS AND THE REQUIREMENTS IMPOSED ARE, IN THEORY, NO DIFFERENT FROM THOSE IMPOSED ON DOMESTICALLY-OWNED U.K. BANKS. THIS SAID, COMFORT LETTERS FROM FOREIGN PARENTS HAVE BEEN REQUESTED BY THE BANK IN CASE THERE SHOULD BE NEED FOR A FINANCIAL BAIL-OUT. THERE IS A DIFFERENCE IN EXAMINATION IF THE BANK IN QUESTION IS THE U.K. BRANCH OF A FOREIGN BANK, IN WHICH CASE THE BANKING REGULATORY AGENCIES IN THE FOREIGN COUNTRY CONCERNED ARE CONSIDERED PRIMARILY RESPONSIBLE.

8. ALL AUTHORIZED U.K. BANKS, EITHER U.K. REGISTERED OR FOREIGN BRANCHES, ARE SUBJECT TO THE SAME MONETARY AND FOREIGN EXCHANGE CONTROLS.

9. FOR ADDITIONAL BACKGROUND SEE THE ATTACHMENT TO MY LETTER TEMPLEMAN (COPY TO YOU) OF APRIL 20, 1978, U.K. REGULATIONS AND PRACTICES GOVERNING U.S. BANKS. THE ONLY MAJOR CHANGE I AM AWARE OF IS THAT THE ASSETS TEST FOR FOREIGN BANKS HAS BEEN INCREASED WITH INFLATION, AND MUST NOW BE IN THE \$3 BILLION RANGE RATHER THAN \$1 BILLION WHICH HAD EARLIER BEEN THE TESTING LEVEL.
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